

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ALASKA

PATRICK L. SHORTY,

Plaintiff,

vs.

MUNICIPALITY OF ANCHORAGE,
et al.,

Defendants.

Case No. 3:05-cv-00237-TMB

ORDER REGARDING
WAIVER OF PRE-PAYMENT
OF FEES on APPEAL

Patrick L. Shorty, a self-represented prisoner, has filed an untimely interlocutory appeal in this civil rights case, challenging the Court's refusal to stay this action pending the outcome of his state criminal trial.¹ However, Mr. Shorty has not paid the appellate court filing fee or filed an application to waive prepayment of

¹ See Docket Nos. 37-39, 45-46, 60.

that fee.² Under the Prison Litigation Reform Act, as a prisoner, Mr. Shorty is now required to pay the full appellate court filing fee of \$455.00 for his appeal.³

Mr. Shorty must pay an initial filing fee of 20 percent of the greater of (a) the average monthly deposits to his prison or jail account for the six months immediately before filing the lawsuit; or (b) the average monthly balance in his prison or jail account for that same six month period. The institution with custody of Mr. Shorty will deduct the money, when funds are available, from his account and send the money to the Court as ordered. Mr. Shorty will then owe monthly payments in the amount of twenty percent of the past month's income from his trust account each time the amount in the account exceeds \$10.00, until the statutory filing fee of \$455.00 is paid in full.⁴ Responsibility for collecting these fees and submitting them to the Court lies with the agency that has custody of the prisoner.⁵

The Court must have full and complete information about Mr. Shorty's financial status in order to compute the initial installment payment. The Court has developed a form to obtain all the information it needs to make this decision. Mr. Shorty will be allowed to file an application on the enclosed Court form, including all of the required

² See Docket No. 60; see *also* FED. R. APP. P. 24(a)(3). This case was removed from state to federal court by the defendants, who paid this Court's filing fee, See Docket Nos. 1-5.

³ See 28 U.S.C. § 1915(b).

⁴ See 28 U.S.C. § 1915(b).

⁵ See *id.*

documentation. Mr. Shorty must answer all questions on the application fully, completely and directly, or the application will be denied. If a question does not apply, answer "N/A"; otherwise answer "yes" or "no", check all applicable boxes, fill in all blanks, and provide complete information as requested.

Mr. Shorty is cautioned that, regardless of the outcome of the appeal, **no part of the fee will be returned**; instead, the Court continues to collect the fee until it is **paid in full**.

Finally, **a prisoner who files more than three actions or appeals in any federal court in the United States which are dismissed as frivolous or malicious or for failure to state a claim on which relief can be granted, will be prohibited from bringing any other actions without prepayment of fees unless the prisoner can demonstrate that he or she is in "imminent danger of serious physical injury."**⁶

IT IS HEREBY ORDERED that:

1. If Mr. Shorty decides to proceed with the appeal in light of the above-described risks, he must file an application to waive prepayment of fees on the

⁶ 28 U.S.C. § 1915(g); see also, *Tierney v. Kupers*, 128 F.3d 1310, 1312 (9th Cir. 1997) ("Section 1915(g)'s cap on prior dismissed claims applies to claims dismissed both before and after the statute's effective date. Therefore, regardless of the dates of the dismissals, the analysis is the same: three prior dismissals on the stated grounds equals no in forma pauperis status in new filings, unless the prisoner is in imminent danger of serious physical injury").

enclosed form, **including all the requested documentation**, on or before **August 27, 2007**, as set forth in this Order; otherwise, he must immediately send the \$455.00 appellate filing fee to this Court.⁷

2. The Clerk of Court is directed to send form PS10, Prisoner's Application to Waive Prepayment of Fees, with instructions, to Mr. Shorty with this Order.

DATED this 26th day of July, 2007, at Anchorage, Alaska.

/s/TIMOTHY M. BURGESS
United States District Judge

⁷ See FED. R. APP. P. 3(e).